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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,355	07/06/2001	H. Craig Dees	PHO-122	5998
7590 10/31/2003 COOK, ALEX, McFARRON, MANZO, CUMMINGS & MEHLER, LTD. Suite 2850 200 West Adams St. Chicago, IL 60606			EXAMINER EPPS FORD, JANET L	
			ART UNIT 1635	PAPER NUMBER

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/900,355

Applicant(s)

DEES ET AL.

Examiner

Janet L. Epps-Ford, Ph.D.

Art Unit

1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

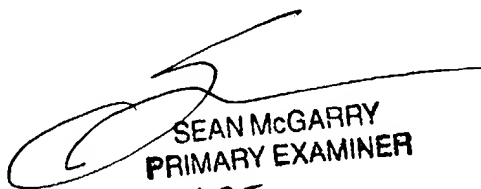
Claim(s) rejected: 1-11 and 19-27 for the reasons of record set forth in the Final Office Action.

Claim(s) withdrawn from consideration: 12-18 and 28-30.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

Continuation of 2. NOTE: Applicants have made multiple amendment to the claims, however Applicants make no reference to the disclosure as filed, for support of these claim amendments. Applicant's amendment does not comply with 37 CFR 1.530(e), which states that, "Whenever there is an amendment to the claims pursuant to paragraph (d) of this section, there must also be supplied, on pages separate from the pages containing the changes, the status ( i.e., pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes to the claims made by th amendment paper." Moreover, applicants have provided multiple references to support their arguments, however none of these references were included in a properly filed IDS prior to final rejection, or accompanied by the appropriate fee under 37 CFR § 1.97(d) for consideration after final.

Continuation of 10. Other: Upon a cursory review of Applicant's Remarks filed 9-25-03, Applicants traverse the rejections set forth in the prior Office Action on the grounds that none of the references cited by the examiner in the rejections under 35 USC § 102 or § 103 teach the therapeutic or chemotherapeutic use of a halogenated xanthene, or more specifically Rose Bengal as a chemotherapeutic agent. However, contrary to Applicant's assertions, the terms "chemotherapeutic" and "therapeutic" are intended use limitations. To the extent that the prior art discloses compositions comprising a halogenated xanthene compound, in particular Rose Bengal, the rejections set forth in the final Office Action are maintained.

  
SEAN MCGARRY  
PRIMARY EXAMINER  
1635